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EXAMINER				
WOOD, JONATHAN K				
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3754				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/574,836

Applicant(s)

BEHAR ET AL.

Examiner

JONATHAN WOOD

Art Unit

3754

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,8-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,8-18 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to because it depends from cancelled claim 4. Appropriate correction is required. For purposes of examination, examiner assumes claim 21 depends from independent claim 1.
2. Claims 21 and 22 are objected to because of the following informalities: the word "the" is missing before the term "inlet duct" in line 2 of each claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 8-17, 21, 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the bearing surface extending axially downstream from the connection sleeve" in line 10. This limitation is unclear in its meaning since, according to applicant's disclosure, the bearing surface and connection sleeve are formed on two separate parts of the device and therefore one could not be extending from the other. For purposes of examination, examiner assumes applicant intended to state "the bearing surface located axially downstream from the connection sleeve".

Claim 13 recites the limitation "a base skirt" in line 2 after a base skirt has previously been defined in line 11 of claim 1. Consequently, it is unclear if applicant is referencing a new base skirt or referring to the previously defined one. For purposes of examination, examiner assumes applicant intended to state "the base skirt" in claim 13.

Claims 25 and 26 recite the limitation "the bearing surface extending axially downstream from the connection sleeve" in lines 9-10. This limitation is unclear in its meaning since, according to applicant's disclosure, the bearing surface and connection sleeve are formed on two separate parts of the device and therefore one could not be extending from the other. For purposes of examination, examiner assumes applicant intended to state "the bearing surface located axially downstream from the connection sleeve".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 8, 9, 11-14, 16, 21, 25, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,775,081 to *Morane* (*Morane*).

Regarding claim 1, *Morane* shows a cosmetic product dispenser head that is displaceable down and up along a central axis of an actuator rod (2), the head comprising an axial connection sleeve (bottom portion of 9, also see col. 3, ll. 63-68) and defining an inlet duct (vertical duct below 11b and 11b), the head further comprising a dispenser endpiece (10) defining an endpiece channel (portion of 11a from downstream end to bend) that is connected to the inlet duct via a connection channel (portion of 11a from endpiece channel defined above to 11b), the endpiece including a dispenser orifice (downstream end of 11a) that is situated at a downstream end of the endpiece channel (Figure 1), the head further comprising a bearing surface (rounded surfaces of 9 and 10, best seen in Figure 3) on which axial pressure can be exerted (F, Figure 3), the endpiece being substantially parallel to the central axis (Figure 3), and being offset away from the central axis (Figure 3), the bearing surface located axially downstream from the connection sleeve and intersecting the central axis (Figure 1), the head further comprising a base skirt (bottom of rounded portion of 9 which is parallel with central axis) that extends around the connection sleeve (Figure 1), the endpiece being inscribed within the outline of the skirt (Figure 3), the endpiece being axially tangential to the skirt (Figure 3), the head further comprising an inner core (9) and an

outer casing (10), the core forming the connection sleeve and part of the connection channel (Figure 1), the casing forming the dispenser orifice and a bearing wall (rounded portion of 10) defining the bearing surface (Figure 3).

Morane fails to show the core being axially engaged in the casing. Instead, *Morane* shows the casing axially engaged in the core (Figure 1). However, the alternative embodiment of the device of *Morane*, shown in Figure 6, shows the core member having an extension 15 which is axially engaged into the casing (Figure 4, col. 4, ll. 39-44). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Morane*, to have utilized an extension 15, including longitudinal projections 16, on the first embodiment of the device of *Morane* in order to be able to easily and accurately preorient the casing in relation to the axis of the device (col. 4, ll. 45-51). The modification would also require the addition of the corresponding longitudinal grooves 17 into the casing, as described by *Morane* at col. 4, ll. 49-53. The resulting combination would therefore have the core 9 of the first embodiment of *Morane* axially engaged into the casing 10.

Regarding claim 8, *Morane* further shows the core forms an axial spout that is engaged in the endpiece (15, given combination of two embodiments explained above), a bottom portion of the endpiece channel being formed between the casing and the spout (since the spout is engaged into the endpiece, the endpiece channel would inherently be partially defined by the spout).

Regarding claim 9, *Morane* discloses the claimed invention except for the axial spout includes axial projections which mate with axial grooves in the casing instead of the spout having axial grooves which mate with axial projections in the casing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included axial projections on the axial spout and corresponding axial grooves in the casing, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 11, *Morane* further shows the core forms a bearing plate (flattened portion of 9, including added extension 15 from combination of two embodiments added above) into which the duct opens out axially (Figure 1), the connection channel being formed between the plate and the casing (given combination of two embodiments explained above, the connection channel is extended out through the added extension 15 and consequently is partially defined by both the extension portion of the plate and by the casing).

Regarding claim 12, *Morane* further shows the plate includes a transverse groove (projections 16) that cooperates with the casing (via grooves 17).

Regarding claim 13, *Morane* further shows the core forms a collar (15, given combination of two embodiments explained above) that is engaged in a base skirt (bottom portion of 10) formed by the casing.

Regarding claim 14, *Morane* further shows the dispenser endpiece having a flat spatula shape (Figure 3).

Regarding claim 16, *Morane* further shows the bearing surface slopes (Figure 1), forming an angle lying in the range 40° to 90° relative to the central axis (bearing surface slopes from 0° to 90° relative to the central axis as seen in Figure 1), in such a manner as to intersect the central axis (Figure 1).

Regarding claim 21, *Morane* further shows the inlet duct extends completely through the core (given combination of two embodiments explained above, the inlet duct is extended out through the added extension 15) along the central axis (bottom portion extends along central axis as seen in Figure 1).

Regarding claim 25, *Morane* shows a cosmetic product dispenser head that is displaceable down and up along an axis, the head comprising an axial connection sleeve (bottom portion of 9, also see col. 3, ll. 63-68) and defining an inlet duct (vertical duct below 11b and 11b), the head further comprising a dispenser endpiece (10) defining an endpiece channel (portion of 11a from downstream end to bend) that is connected to the inlet duct via a connection channel (portion of 11a from endpiece channel defined above to 11b), the endpiece including a dispenser orifice (downstream end of 11a) that is situated at a downstream end of the endpiece channel (Figure 1), the head further comprising a bearing surface (rounded surfaces of 9 and 10, best seen in Figure 3) on which axial pressure can be exerted (F, Figure 3), the endpiece being substantially parallel to the axis (Figure 3), and being offset away from the axis (Figure 3), the bearing surface located axially downstream from the connection sleeve and intersecting the axis (Figure 1), the head further comprising a base skirt (bottom of

rounded portion of 9 which is parallel with central axis) that extends around the connection sleeve (Figure 1), the endpiece being inscribed within the outline of the skirt (Figure 3), the endpiece being axially tangential to the skirt (Figure 3), the head further comprising an inner core (9) and an outer casing (10), the core forming the connection sleeve and part of the connection channel (Figure 1), the casing forming the dispenser orifice and a bearing wall (rounded portion of 10) defining the bearing surface (Figure 3).

Morane fails to show the core being axially engaged in the casing or the core forming an axial spout. Instead, *Morane* shows the casing axially engaged in the core (Figure 1). However, the alternative embodiment of the device of *Morane*, shown in Figure 6, shows the core member having an extension 15 which is axially engaged into the casing (Figure 4, col. 4, ll. 39-44). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Morane*, to have utilized an extension 15, including longitudinal projections 16, on the first embodiment of the device of *Morane* in order to be able to easily and accurately preorient the casing in relation to the axis of the device (col. 4, ll. 45-51). The modification would also require the addition of the corresponding longitudinal grooves 17 into the casing, as described by *Morane* at col. 4, ll. 49-53. The resulting combination would therefore have the core 9 of the first embodiment of *Morane* axially engaged into the casing 10. The resulting combination further shows the core forms an axial spout that is engaged in the endpiece (extension 15), a bottom portion of the endpiece channel being formed between the casing and the spout (since the spout is

engaged into the endpiece, the endpiece channel would inherently be partially defined by the spout).

Further, the modified device of *Morane* discloses the invention of claim 25 except for the axial spout includes axial projections which mate with axial grooves in the casing instead of the spout having axial grooves which mate with axial projections in the casing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included axial projections on the axial spout and corresponding axial grooves in the casing, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 26, *Morane* shows a cosmetic product dispenser head that is displaceable down and up along an axis, the head comprising an axial connection sleeve (bottom portion of 9, also see col. 3, ll. 63-68) and defining an inlet duct (vertical duct below 11b and 11b), the head further comprising a dispenser endpiece (10) defining an endpiece channel (portion of 11a from downstream end to bend) that is connected to the inlet duct via a connection channel (portion of 11a from endpiece channel defined above to 11b), the endpiece including a dispenser orifice (downstream end of 11a) that is situated at a downstream end of the endpiece channel (Figure 1), the head further comprising a bearing surface (rounded surfaces of 9 and 10, best seen in Figure 3) on which axial pressure can be exerted (F, Figure 3), the endpiece being substantially parallel to the axis (Figure 3), and being offset away from the axis (Figure

3), the bearing surface located axially downstream from the connection sleeve and intersecting the axis (Figure 1), the head further comprising a base skirt (bottom of rounded portion of 9 which is parallel with central axis) that extends around the connection sleeve (Figure 1), the endpiece being inscribed within the outline of the skirt (Figure 3), the endpiece being axially tangential to the skirt (Figure 3), the head further comprising an inner core (9) and an outer casing (10), the core forming the connection sleeve and part of the connection channel (Figure 1), the casing forming the dispenser orifice and a bearing wall (rounded portion of 10) defining the bearing surface (Figure 3).

Morane fails to show the core being axially engaged in the casing. Instead, *Morane* shows the casing axially engaged in the core (Figure 1). However, the alternative embodiment of the device of *Morane*, shown in Figure 6, shows the core member having an extension 15 which is axially engaged into the casing (Figure 4, col. 4, ll. 39-44). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Morane*, to have utilized an extension 15, including longitudinal projections 16, on the first embodiment of the device of *Morane* in order to be able to easily and accurately preorient the casing in relation to the axis of the device (col. 4, ll. 45-51). The modification would also require the addition of the corresponding longitudinal grooves 17 into the casing, as described by *Morane* at col. 4, ll. 49-53. The resulting combination would therefore have the core 9 of the first embodiment of *Morane* axially engaged into the casing 10. The resulting combination further shows the core forms a bearing plate (flattened portion of 9, including added

extension 15) into which the duct opens out axially (Figure 1), the connection channel being formed between the plate and the casing (given combination, the connection channel is extended out through the added extension 15 and consequently is partially defined by both the extension portion of the plate and by the casing), wherein the plate includes a transverse groove (projections 16) that cooperates with the casing (via grooves 17).

8. Claims 10, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Morane* as applied to claims 1 and 8 above, and further in view of US Patent No. 3,428,223 to *Lewiecki et al.* (*Lew*).

Regarding claim 10, *Morane* shows all aspects of applicant's invention as set forth in claim 8 above, and further shows the spout (15) includes an end (downstream end) that terminates in a position set back from the dispenser orifice (best seen in Figure 4), a top portion of the endpiece channel being formed solely by the casing downstream from the spout (Figure 1), the dispenser orifice being formed in the top portion (Figure 1). *Morane* fails to show the casing endpiece is flexible at the top portion. However, *Lew* shows a dispenser head (10) in which a downstream portion of an endpiece which defines a dispenser orifice (20) includes a flexible portion (24 with 28). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Lew*, to have included a flexible portion like that of *Lew* in the top portion of the endpiece of *Morane* in order to seal off the discharge channel subsequent to use and thereby prevent clogging of the channel (*Lew*, col. 1, ll. 43-46).

Regarding claims 15 and 17, *Morane* shows all aspects of applicant's invention as set forth in claim 1, but does not disclose the free end of the dispenser endpiece being flexible, in particular the dispenser orifice being a self-sealing flexible slot. However, *Lew* shows a dispenser head (10) in which a downstream portion of an endpiece which defines a dispenser orifice (20) includes a flexible portion in the form of a self-sealing flexible slot (24 with 28, col. 2, ll. 46-51). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Lew*, to have included a flexible portion like that of *Lew* in the top portion of the endpiece of *Morane* in order to seal off the discharge channel subsequent to use and thereby prevent clogging of the channel (*Lew*, col. 1, ll. 43-46).

9. Claims 18, 20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Morane* in view of US PGPub No. 2003/0071085 A1 to *Lasserre et al.* (*Lass*).

Regarding claim 18, *Morane* shows a cosmetic product dispenser comprising an actuator rod (2) displaceable along a central axis, and a dispenser head comprising an axial connection sleeve (bottom portion of 9, also see col. 3, ll. 63-68) and defining an inlet duct (vertical duct below 11b and 11b), the head further comprising a dispenser endpiece (10) defining an endpiece channel (11a) that is connected to the inlet duct, the endpiece including a dispenser orifice (downstream end of 11a) that is situated at a downstream end of the endpiece channel (Figure 1), the endpiece being substantially parallel to the axis (Figure 3), and being offset away from the axis (Figure 3), the head

further comprising a bearing surface (rounded surfaces of 9 and 10, best seen in Figure 3) on which axial pressure can be exerted (F, Figure 3), the bearing surface intersecting the axis (Figure 1), the head further comprising an inner core (9) and an outer casing (10), the core forming the connection sleeve and part of the channel (Figure 1), the casing forming the dispenser orifice and a bearing wall (rounded portion of 10) defining the bearing surface (Figure 3).

Morane fails to show the core being axially engaged in the casing. Instead, *Morane* shows the casing axially engaged in the core (Figure 1). However, the alternative embodiment of the device of *Morane*, shown in Figure 6, shows the core member having an extension 15 which is axially engaged into the casing (Figure 4, col. 4, ll. 39-44). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Morane*, to have utilized an extension 15, including longitudinal projections 16, on the first embodiment of the device of *Morane* in order to be able to easily and accurately preorient the casing in relation to the axis of the device (col. 4, ll. 45-51). The modification would also require the addition of the corresponding longitudinal grooves 17 into the casing, as described by *Morane* at col. 4, ll. 49-53. The resulting combination would therefore have the core 9 of the first embodiment of *Morane* axially engaged into the casing 10.

Morane further fails to disclose the actuator rod being part of a pump but instead discloses the actuator rod as part of a valve. However, *Lass* discloses that it is known in the art to utilize a dispensing head which exerts axial pressure onto an actuator rod with both actuator rods of valves and pumps (§18). Therefore, it would have been

obvious to one having ordinary skill in the art at the time the invention was made to try to utilize the device of *Morane* with an actuator rod of a pump instead of an actuator rod of a valve.

Regarding claim 20, *Morane* as modified by *Lass* further shows a shape of an inner surface of the outer casing (grooves 17) corresponds with a shape of the outer surface of the inner core (projections 16).

Regarding claim 22, *Morane* as modified by *Lass* further shows the inlet duct extends completely through the core (given combination of two embodiments of *Morane* explained above, the inlet duct is extended out through the added extension 15) along the central axis (bottom portion extends along central axis as seen in Figure 1).

10. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,765,601 to *Wells et al. (Wells)* in view of *Lass*.

Regarding claim 23, *Wells* shows a product dispenser comprising an actuator rod (21) displaceable along a central axis (col. 7, ll. 25-32), and a dispenser head comprising a core (34) comprising an axial connection sleeve (46) defining an inlet duct (39), the core further comprising an endpiece (44) that extends parallel to and offset from the central axis (Figure 4), the core further comprising a channel running from the inlet duct to a distal end of the endpiece (38), an outer casing (19) covering the core such that the outer casing closes the channel (Figure 4) thereby forming a duct that runs from the inlet duct to the distal end of the endpiece (38).

Wells fails to disclose the actuator rod being part of a pump but instead discloses the actuator rod as part of a valve. However, *Lass* discloses that it is known in the art to utilize a dispensing head which exerts axial pressure onto an actuator rod with both actuator rods of valves and pumps (§18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to try to utilize the device of *Morane* with an actuator rod of a pump instead of an actuator rod of a valve.

Regarding claim 24, *Wells* as modified by *Lass* further shows the dispenser head comprises a bearing surface (36), wherein the bearing surface intersects the central axis (Figure 4).

Response to Arguments

11. Applicant's arguments with respect to claims 1, 8-18 and 20-24 have been considered but are moot in view of the new ground(s) of rejection.

Further, it is noted that independent claims 25 and 26 were indicated as allowable in the previous office action. However, examiner has found that the new ground(s) of rejection covers the dependent claims from which claims 25 and 26 stem. Consequently, claims 25 and 26 have also been rejected and the previous indication of allowability rescinded.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth Bomberg/
Primary Examiner, Art Unit 3754

/JKW/
Examiner, Art Unit 3754